

United States District Court

For the Northern District of California

11 UNITED STATES OF AMERICA,

12 Plaintiff,

12 No. CR 13-00794 WHA

13 v.

14 DAVID ANDREW MARTINEZ,
15 RUBEN ALEJANDRO QUIROZ,
16 CESAR CASTELLANOS, and
16 SAMUEL TEWOLDE,17 Defendants.
18 _____/
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20 At the November 4, 2014, *Daubert* hearing of gang expert Travis Menke, the
21 undersigned judge ordered the government to disclose to defense counsel the following
22 documents that Menke relied upon in forming his opinion: (1) intelligence memoranda; (2) the
23 Santa Rosa Police Department gang manual created in or around 2003; and (3) gang registration
24 forms.
25 The government agreed to produce the documents, but sought leave to review the
26 materials and submit them for an *in camera* review if the government believed redactions were
27 appropriate. On November 26, 2014, the government filed a memorandum stating that it had
28 disclosed to defendants the gang manual, gang registration forms, and some intelligence
memoranda. The government sought leave to withhold production of some intelligence**ORDER RE DISCLOSURE OF
INTELLIGENCE MEMORANDA**

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For the Northern District of California

1 memoranda because: (1) they contain highly sensitive information which, if disclosed, could
2 compromise the safety of the individuals referenced therein and (2) the discovery rules do not
3 require their disclosure. In the alternative, the government requested that the Court adopt the
4 government's proposed redactions if the Court required disclosure (Dkt. No. 223).

5 On December 8, 2014, counsel for defendant Martinez opposed the government's
6 request, arguing that the government should turn over all of the intelligence memoranda
7 Detective Menke relied upon. Defense counsel stated that the government's fear for witness
8 safety could be addressed by redacting identifying information (Dkt. No. 228).

9 *First*, the government claims that the withheld documents are not *Brady*, Rule 16, or
10 Jencks Act material. Thus, the government is not required to turn over the documents at issue.
11 *Second*, the government claims that the public interest in allowing the government to protect its
12 confidential informants is strong in this case and outweighs any request for disclosure.

13 The government has a qualified privilege to withhold informants' identities. The purpose
14 of the privilege is:

15 the furtherance and protection of the public interest in effective
16 law enforcement. The privilege recognizes the obligation of
17 citizens to communicate their knowledge of the commission of
crimes to law-enforcement officials and, by preserving their
anonymity, encourages them to perform that obligation.

18 *Roviaro v. United States*, 353 U.S. 53, 59 (1957). As *Roviaro* explained, a court must balance
19 "the public interest in protecting the flow of information against the individual's right to prepare
20 his defense." *Id.* at 60.

21 The undersigned judge has reviewed the withheld intelligence memoranda and the
22 declaration of Travis Menke *in camera*. Due to the inherent dangers that accompany
23 cooperating against a violent gang, the undersigned judge is concerned for the safety of these
24 confidential informants. On the other hand, defendants have a right to fully understand the bases
25 underlying Menke's expert testimony. Under the standard laid out in *Roviaro*, the public interest
26 is best served by the government disclosing the intelligence memoranda in redacted form. The
27 government's redactions are appropriate and minimal.

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1 The government is hereby ordered to produce the remaining intelligence memoranda in
2 its proposed redacted form. For appellate review, the government shall maintain exact copies of
3 the original material in unredacted form, so it can be provided to the appellate judges.

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5 **IT IS SO ORDERED.**

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7 Dated: December 10, 2014.

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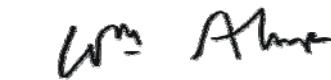
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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE